

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONALD DALE PENCE,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.

OPINION and ORDER

09-cv-489-slc¹

Petitioner has moved under Fed. R. Civ. P. 60(b) for relief from the judgment entered in this case on September 30, 2009. Rule 60(b) is “an extraordinary remedy and is granted only in exceptional circumstances.” Harrington v. City of Chicago, 433 F.3d 542, 546 (7th Cir. 2006) (internal quotation omitted). Petitioner has not identified any “exceptional circumstances.” Indeed, aside from repeating the arguments he made in his motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), dkt. #8, plaintiff makes only one argument: he never consented to the magistrate judge’s jurisdiction. However, that point is irrelevant because the magistrate never decided any dispositive issues in the case. Because

¹ Because this case was resolved before the parties consented to the magistrate judge’s jurisdiction, I am assuming jurisdiction over the case for the purpose of this order.

the parties had not consented to jurisdiction, I assumed jurisdiction over the case and decided the merits of petitioner's case. In short, I am not persuaded that grounds exist for relief from judgment under Fed. R. Civ. P. 60(b) and petitioner's motion will be denied.

ORDER

IT IS ORDERED that petitioner Donald Dale Pence's "Rule 60(b) petition," dkt. #12, is DENIED.

Entered this 3rd day of November, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge